

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 22, 2003

IN RE:

**IMPLEMENTATION OF THE FEDERAL
COMMUNICATIONS COMMISSION'S TRIENNIAL
REVIEW ORDER- 9 MONTH PROCEEDING-LOOP
AND TRANSPORT**

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**DOCKET NO.
03-00527**

ORDER MODIFYING PROCEDURAL SCHEDULE

This matter is before the Hearing Officer pursuant to the *Order Denying Joint Motion In Part And Granting Joint Motion In Part And Re-Establishing Procedural Schedule* filed in this Docket on November 20, 2003. In that Order, the Hearing Officer denied a request filed jointly on November 5, 2003 by BellSouth Telecommunication, Inc. ("BellSouth"), the Competitive Carriers of the South, Inc. ("CompSouth"), and United Telephone-Southeast, Inc. ("UTSE") that the Hearing in this Docket be rescheduled for the week of March 29, 2004.

Based upon discussions with the Proponents at the regularly scheduled November 10, 2003 Authority Conference regarding rescheduling of the Hearing date, the Hearing Officer wrote a letter to the parties on November 13, 2003, asking for written confirmation of the Parties' agreement or disagreement with the following terms:

1. The hearings in the three Triennial Review dockets (03-00491, Mass Market Switching, 03-00526, Batch Hot Cuts, 03-00527, Loop and Transport) will be completed during the week of March 29 through April 2, 2004. All oral testimony, including cross-examination of witnesses, will be heard during that time frame.

Any oral testimony that is not or cannot be presented during that time frame will be knowingly and voluntarily waived by the Parties.

2. The cross-examination presented during the week of March 29 through April 2, 2004 will be segregated by individual docket.

3. The Parties jointly will present the Hearing Officer with an agreed final schedule for the week of March 29 through April 2, 2004, including specific witnesses and time frames for the presentation of testimony in each docket, by March 8, 2004.

The Parties were asked to present a written response to those terms by November 17, 2003.

On November 17, 2003, UTSE and Sprint Communications Company, L.P. filed a response to the Hearing Officer's letter. On November 18, 2003, AT&T and CompSouth filed a response concurring with BellSouth's response. On the same date, MCIMetro Access Transmission Services, LLC and Brooks Fiber Communications of Tennessee, Inc. also filed their joint concurrence with BellSouth's response. The Consumer Advocate and Protection Division of the Office of the Attorney General, a Party in this Docket, did not file a response by November 17, 2003. However, the Consumer Advocate and Protection Division submitted a letter to the Hearing Officer on November 25, 2003 stating the "Consumer Advocate is willing and able to meet the requirements set out in your letter of November 13, 2003."

Based upon the failure of all Parties to respond by November 17, 2003 and the failure of all Parties to agree unequivocally with the terms and conditions set forth in that letter, the Hearing Officer found that there was no reasonable basis on which to conclude that the Hearings for all three (3) Triennial Review dockets could be completed during the week of March 29, 2004 and denied the request to reschedule the Hearing. However, in the Order the Hearing Officer stated that "[t]he Parties may bring this matter back before

the Hearing Officer at such time as there is agreement among the Parties as to the terms and conditions set forth in the letter of November 13, 2003.”

On December 12, 2003, BellSouth, CompSouth, UTSE and the Sprint Companies and the Consumer Advocate and Protection Division submitted an agreement for approval to allow the hearings for the three (3) Triennial Review dockets to be completed during the week of March 29, through April 2, 2004. The Parties agreed to each of the terms set forth in the letter of November 13, 2003 outlined above. In addition, to accomplish the first term set forth in the letter, the Parties agreed to:

1. Limit each side’s opening statement to ten (10) minutes.
2. File brief written summaries of pre-filed testimony prior to the hearing in lieu of oral summaries by witnesses. The witnesses’ pre-filed written testimony (direct, rebuttal and surrebuttal) will be submitted into the evidentiary record for consideration by the Authority in its deliberations.
3. Divide the total hearing hours for cross-examination equally between both sides for each of the three (3) dockets. UTSE and the Sprint Companies and the Consumer Advocate and Protection Division (“CAPD”) will each have two (2) hours of cross-examination time. Each side, UTSE and Sprint and the CAPD will decide, in its discretion, how to distribute its allotted hours of cross-examination between the various issues and witnesses within the three (3) dockets. For any witness presenting pre-filed written testimony in the three (3) Tennessee TRO dockets, the Parties may submit transcripts of cross-examination of those witnesses from prior state TRO hearings into the evidentiary record.

4. Waive closing arguments and submit post-hearing briefs in accordance with the procedural schedule.
5. The Parties will begin on Monday, March 29, 2004 with the Mass Market Switching docket, proceed to the Batch Hot Cut docket and conclude with the Loop & Transport docket hearing on Friday, April 2, 2004. (The parties are willing to extend the hearing through Saturday, April 3, 2004 if the Authority wishes to do so.)

In addition, the parties agreed that CompSouth and BellSouth will each have fourteen (14) hours of cross-examination in total for the three (3) dockets, based on five (5) hearing days with seven (7) hours of hearing time each day. The parties also stated they remain willing to increase the total number of available hours by starting early or remaining late on each hearing date if needed.

Based upon these representations by the Parties, the Hearing Officer finds there is a reasonable basis on which to conclude that the Hearings for all three (3) Triennial Review dockets (TRA Dockets 03-00491, Mass Market Switching, 03-00526, Batch Hot Cuts and 03-00527, Loop and Transport) can be completed during the week of March 29, 2004 through April 2, 2004.

In a letter to the Hearing Officer dated December 12, 2003, KMC Telecom III, LLC wrote that it was in "general agreement" with the outline being proposed by the Parties, subject to a clarification of the route identification filing to be submitted by BellSouth and proposed a clarification of the information to be filed. The Hearing Officer agrees that the route identification should be clarified and hereby orders that the route information shall include: (1) for loops, specific customer addresses and the serving

central office or wire center; (2) for transport, the A to Z central office routes; and (3) any additional information BellSouth or UTSE wish to provide for the Authority to consider during its analysis. Under the modified procedural schedule set out below, such route information will be due on January 2, 2004. **The Hearing in this matter will be limited to those routes identified in the filing on January 2, 2004.**¹

KMC Telecom III, LLC ("KMC Telecom") has filed a motion requesting an extension until December 12, 2003 to respond to discovery requests, stating that it was "taking ... longer than anticipated to gather the necessary information." KMC Telecom is granted an extension until December 29, 2003 to respond to discovery requests.

Pursuant to the foregoing, the Procedural Schedule for the completion of this Docket is modified as indicated below.

December 29, 2003	KMC Telecom shall file responses to discovery requests
January 2, 2004	BellSouth and UTSE shall file petitions with the TRA identifying specific routes and customer locations as specified in this Order for which the company intends to undertake a rebuttal of the presumption of impairment.
January 9, 2004	The second round of Discovery Requests by all Parties shall be filed with the TRA and served on all Parties.
January 19, 2004	Responses and Objections to the second round of Discovery Requests shall be filed with the TRA and served on all Parties.

¹ The FCC's Triennial Review Order ("TRO") anticipates that after the completion of initial reviews, states will adopt procedures to conduct further granular reviews to identify additional customer locations. The restriction of this Hearing to the route information provided by January 2, 2004 is not intended to limit any further reviews the Authority may undertake after this initial review. *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order (rel. Aug. 21, 2003)(FCC 03-36), as corrected by errata, FCC 03-227 issued on September 17, 2003, ¶ 340.

January 26, 2004	Motions to Compel Responses to the second round of Discovery Requests shall be filed with the TRA and served on all Parties.
February 2, 2004	Responses to Motions to Compel Responses to the second round of Discovery Requests shall be filed with the TRA and served on all parties
February 17, 2004	Supplemental Responses shall be filed with the TRA and served on all Parties.
March 1, 2004	Pre-filed Direct Testimony shall be filed with the TRA and served on all Parties.
March 8, 2004	The Parties jointly will present the Hearing Officer with an agreed final schedule for the week of March 29 through April 2, 2004, including specific witnesses and time frames for the presentation of testimony in each docket.
March 15, 2004	Pre-filed Rebuttal Testimony shall be filed with the TRA and served on all Parties.
March 29 through April 2, 2004	Hearing on the merits, beginning each day at 9 a.m. unless otherwise indicated.
April 20, 2004	Post-Hearing Briefs shall be filed with the TRA and served on all Parties.
May 5, 2004	Post-Hearing Reply Briefs shall be filed with the TRA and served on all Parties.

IT IS THEREFORE ORDERED THAT:

1. The request to reschedule the Hearing in this Docket for the week of March 29, 2004 through April 2, 2004 is granted.
2. The route information to be filed on January 2, 2004 shall include: (1) for loops, specific customer addresses and the serving central office or wire center; (2) for transport, the A to Z central office routes; and (3) any additional information BellSouth or UTSE wish for the Authority to consider during its analysis.

3. KMC Telecom III, LLC is granted an extension until December 29, 2003 to respond to discovery requests.

4. The Procedural Schedule for the completion of this Docket issued on November 20, 2003 is hereby modified as indicated above.

5. The Hearing in this matter shall be limited to those routes identified in the filing on January 2, 2004.

6. The Parties jointly will present the Hearing Officer with an agreed final schedule for the week of March 29 through April 2, 2004, including specific witnesses and time frames for the presentation of testimony in each TRO docket, by March 8, 2004.

7. This Order may be reviewed by the Voting Panel assigned to this Docket during the regularly scheduled Authority Conference on January 5, 2004.

A handwritten signature in black ink, appearing to read 'Pat Miller', with a long horizontal flourish extending to the right.

Pat Miller, Director
as Hearing Officer